

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FLETCHER CARSON,

No. C 11-03766 DMR

Plaintiff,

**ORDER DENYING PLAINTIFF'S  
MOTION FOR A FINDING OF  
CONTEMPT OF COURT BY  
DEFENDANT RAFF**

v.

VERISMART SOFTWARE, et al.,

Defendants.  
\_\_\_\_\_ /

This matter comes before the court on *pro se* Plaintiff Fletcher Carson's Motion to Request a Finding of Contempt of Court by Defendant Raff and His Legal Counsel and Imposition of Sanctions ("Motion for Contempt"). [Docket No. 127.] The court conducted a hearing on August 23, 2012, during which the parties were given an opportunity to present oral argument. For the reasons below, the court hereby DENIES Plaintiff's Motion for Contempt.

**I. Background**

On June 1, 2012, the parties participated in a settlement conference before the undersigned that resulted in a settlement agreement between Plaintiff and all defendants, including Defendant Carl Raff. [Docket No. 120 (Civil Conference Minute Order, June 1, 2012); Honea Decl. ¶ 2.] At the conclusion of the conference, the parties placed the material terms of the confidential agreement on the court's recording system. Although the parties entered into a binding and enforceable contract on the record, they also indicated that they intended to reduce the terms to writing. The

1 parties gave the undersigned full and binding authority to resolve any drafting disputes. The parties  
2 also requested that the case be reassigned to the undersigned for all purposes. The court entered an  
3 Order Re Sealed Transcript, requiring that any transcript of the settlement proceeding be filed and  
4 maintained under seal. [Docket No. 121.] The court did not enter any other orders regarding the  
5 settlement agreement.

6 Plaintiff Carson now moves for a finding of contempt of court by Defendant Raff and his  
7 attorneys based on Raff's alleged failure to comply with the terms of the settlement agreement.  
8 Specifically, Plaintiff requests the court find Raff and his attorneys in contempt for "willful,  
9 premeditated, and continuing refusal to comply with an order of this court contained in a sealed  
10 transcript of the Settlement Conference" held by the parties on June 1, 2012. Plaintiff also requests  
11 sanctions. (Pl.'s Mot. 3.)

## 12 II. Discussion

13 To obtain a civil contempt citation, the moving party must show by clear and convincing  
14 evidence that the opposing party violated a specific and definite order of the court. *See In re*  
15 *Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). If the  
16 moving party makes the clear and convincing showing, the burden shifts to the party allegedly in  
17 contempt to show that it cannot comply. *See U.S. v. Montgomery Global Advisors*, No. C04-00733  
18 EDL, 2005 WL 2249092, at \*2 (N.D. Cal. Aug. 1, 2005).

19 Here, Plaintiff has not shown that Raff and his attorneys "violated a specific and definite  
20 order of the court," because the court did not enter an order directing Raff or any other party to  
21 comply with the terms of the settlement agreement. Plaintiff argues that "[s]ince this court was  
22 provided with binding authority to decide upon any language disagreements between the parties in  
23 drafting an acceptable Settlement Agreement, this court ordered Defendant Raff to perform as  
24 outlined" on the record by June 30, 2012. (Pl.'s Mot. 3.) However, the court did not order any of  
25 the parties to perform. Neither the agreement of the parties to have the court resolve any drafting  
26 disputes nor the placement of the terms of the settlement agreement on the record resulted in a court  
27 order to comply with the terms of the parties' agreement. While Raff's alleged failure to comply  
28 with the terms of the settlement agreement may be enforced as a breach of that agreement, there was

no court order requiring Raff or his counsel to do anything. Accordingly, as Plaintiff cannot show that Raff violated a “specific and definite order of the court,” his Motion for Contempt is denied.

IT IS SO ORDERED.

Dated: August 24, 2012

